

Technical Coordination Meeting Minutes September 18, 2012

Attendees:

Rob Law, de maximis
Bill Potter, de maximis
Mike Barbara, mab.consulting
Clifford Firstenberg, Tierra
Carlie Thompson, Tierra

Ray Basso, EPA
Eugenia Naranjo, EPA
Stephanie Vaughn, EPA
Sharon Budney, CDM Smith

Objective: Identify specific areas where the Cooperating Parties Group (CPG) and Occidental Chemical Corporation/Tierra Solutions, Inc (Tierra) must coordinate/cooperate in order to meet the requirements of the orders governing the Lower Passaic River Study Area (LPRSA) and the Newark Bay Study Area (NBSA)

Ray Basso, of EPA, reviewed the goals of the meeting, which are to identify issues and what items both parties need to work together on to accomplish the requirements of each Administrative Order of Consent (AOC). He stated that no decisions will be made today, and that we will likely turn over our findings to the attorneys, followed by a mediator, to work on agreements.

Briefly reviewed the AOCs for the NBSA and the LPRSA

- NBSA signed in 2004, then amended. Tierra is responsible for data collection within NB to support model of LPR and NB.
- LPRSA signed in 2007, includes the completion of the model for both NBSA and LPRSA. Tierra is also a respondent on this AOC. CPG responsible for model of LPR and NB.

Tierra paid their portion of the LPRSA RI/FS costs to the CPG up through the first quarter of 2013. This portion was paid prior to Tierra leaving the group. Tierra is unsure whether they will continue to pay, but this will partially depend upon cooperation CPG. Tierra states that they want to cooperate.

A. Sampling/Data Collection and Review

- LPRSA – nearing the end of data collection
- NBSA – still has more to do

New Sample Collection Events for Newark Bay

High Volume Chemical Water Column Monitoring (HV CWCM; October 2012)

- CPG is taking the lead
- Tierra provided comments on the first draft of the HV CWCM QAPP after CPG submitted it to EPA
- CPGs contractor is working under two purchase orders and invoices are assigned to either NBSA or LPRSA

ISSUE: Tierra made request to observe sample collection in NBSA and, at this time, does not think they will want to collect split samples. The CPG indicated that there may be logistical issues with observers on the sampling boats.

SEDFLUME

- EPA is taking the lead
- CPG and Tierra received QAPP last week, comments due by October 1, 2012
- SEDFLUME will be discussed at the EPA-CPG model collaboration meeting on September 25, 2012
- CPG is planning to give comments on locations
- Tierra is also planning to provide comments

Multibeam Bathymetry Survey in NBSA

- Tierra is taking the lead and paying for this effort
- Needed for the sediment transport model
- Modelers requested the survey be performed in NBSA, near the time the LPRSA event is currently being completed
- CPG needs data from this event for the model

ISSUE: Will need to coordinate the effort, CPG modelers will need to provide input into Tierra's QAPP, CPG wants Tierra to use similar methods/procedures to those that were used for LPRSA

SV CWCM – 3 more events (1 routine flow plus 2 high flow events)

- Activity in process
- CPG taking lead, Tierra receives invoices for work in NBSA

ISSUE: Tierra requests to receive modifications to the plans (QAPPs) in advance of them being provided to EPA and to be able to comment on them

Risk Assessment Sampling for NBSA

- Tierra is taking the lead
- Fish tissue and benthic invertebrate sampling, bioaccumulation and toxicology testing
- CPG will need data for food chain modeling
- Prior to Tierra leaving the CPG, CPG did not comment on Tierra's NBSA sampling
- CPG thinks they should have input (at least modelers) because these data will be employed by the CPG modeling team
- Tierra's position – CPG not a respondent to work in NBSA, they can see the information once it is turned over to EPA, when it is public information
- Tierra is willing to share data with the CPG after reporting
- Tierra clarified that it makes sense for Tierra to coordinate with the CPG's modelers, but there is no basis for CPG, in general, to review and comment upon the NBSA QAPPs.

ISSUE: While there is a need to share the data between CPG and Tierra, can/should CPG, or at least its modelers, provide input to how the data is being collected?

NBSA Sample Collection Summary

- Risk assessment not part of Phase 2
- EPA summarized general theme – will provide to each other the data that is needed for requirement of AOCs
- CPG thinks Tierra is not getting input from primary data users (specifically modelers) for NBSA data collection
- Tierra is willing to interact with CPG's modelers but there is no basis for the group members to provide comments

New Sample Collection Events for Passaic River Sampling

HV CWCM (see NBSA for details)

- Largest major sampling effort

ISSUE: Tierra reserves right to observe and collect split samples, logistic issues will need to be worked out. CPG acknowledged Tierra's desire to observe.

SV CWCM (see NBSA for details)

- Three events left

LRC SSP

- EPA will direct CPG to take additional samples
- CPG will prepare a QAPP Addendum to cover additional locations

ISSUE: Tierra wants to provide input on QAPP Addendum (locations of samples) in advance of Addendum submittal to EPA

Background/Reference Sampling above Dundee Dam

- Sediment and Tissue, bioaccumulation and toxicological testing
- Addendum to the existing QAPP
- Tierra saw initial document months ago
- Data does not fall directly into model
- It will help establish an upstream boundary, so is marginally related to the model

ISSUE: Tierra would like to have been able to review the QAPP Addendum prior to submittal to EPA

DO Monitoring – only LPRSA

- Tierra was not aware of this sampling effort
- 12 locations in river, monitoring DO, from Summer 2012 through Thanksgiving

ISSUE: Tierra would have liked the opportunity to review/comment

LPRSA Sample Collection Summary

- Tierra wants to provide input on CPG QAPPs, QAPP Addendums and be made aware of Field Modifications, prior to submittal to EPA, with sufficient time to provide comments to modify documents.
- Tierra wants the opportunity to observe and possibly split for work in LPRSA that would include background samples

Data Reports – Summary of Data

- Tierra wants to see the draft data reports when the CPG distributes to rest of CPG, they want an opportunity to review before they are submitted to EPA
- All parties OK once data reports are finalized - willing to turn over
- Tierra thinks because they paid to be a part of CPG, they should be participating (at least through the first quarter of 2013) in the upfront formation of the document (before submittal to EPA). This is not currently happening
- Tierra willing to work with the CPG modelers (data users), not attorneys representing each CPG member

ISSUE: Should Tierra (or CPG) have the ability to review documents at same time as EPA or review/comment before they are submitted to EPA

B. Meetings

- Modeling Meetings
 - Both CPG and Tierra attend the EPA-CPG collaboration meetings
 - Tierra wants to be involved more in day to day modeling discussions, but it's unclear how this would work
 - Tierra is concerned they are on the outside of the day to day decisions
 - The AOCs require that the CPG complete the model for both the LPRSA and NBSA with EPA oversight; currently Tierra must just accept the results
 - CPG and EPA formerly had annual and semi-annual meetings (not current format) in which Tierra participated
 - Current EPA-CPG modeling collaboration meetings are held quarterly
 - More structured format for modeling meeting is being put in place, will take notes/minutes to distribute to all parties as well as developing list of action items/decisions that will be recorded. All presentations given at the meetings will be distributed with the minutes, which will be distributed in a timely basis.
 - FFS model vs. NBSA/LPRSA Model
 - CPG thinks that until agreement in place, it would rather not have Tierra participate in collaboration meetings
 - Tierra wants to be included in any CPG-only (non-EPA) modeling meetings where decision are made on the direction of model
 - Tierra thinks it needs to be a part of the decisions since they are the recipient of the biggest effect of the outcome of the model.
 - Tierra wants input in the agenda
 - Tierra wants more frequent updates (weekly) of the model, including code

FUTURE ISSUE: Tierra to use the modeling results for remedy selection and future risk calculations. If additional model runs are needed, how will this work going forward, who will do this work?

- Other Meetings
 - Tierra wants some kind of input as before, and to be included on the distribution list for meetings, especially risk assessment

C. Report Preparation

- Tierra is concerned there are a lot of comments on draft reports prior to EPA submittal on how the report is structured. They would not have the ability to comment on this aspect of the report if they comment on it at the same time as EPA.
- CPG – most of the data reports are done, will be working on the analysis reports including: modeling, risk assessment, RI, FS, treatability study, pilot study, etc.
- EPA's thought: it will take a lot of time/effort to get both groups to agree. Is this a worthwhile effort? Instead, perhaps the solution is to share all draft documents submitted to EPA with both groups when they are shared with the Partner Agencies. EPA will consolidate comments and decide which comments go back to authors.

ACTION: EPA wants list of all reports that will be submitted put together by both Tierra for NBSA and CPG for LPRSA to ensure we have a full accounting of all work products

D. Data Transfer

- **Model**

- Tierra wants model code and input/output files on a frequent basis
- October 2012 CPG will submit a technical memorandum with an update of their modeling efforts, including the model code, to EPA
- September 25, 2012 is the next modeling collaboration meeting, Tierra will participate

- **SharePoint**

- CPG has a project portal – everyone in good standing with respect to the CPG's administrative agreement has access to this portal. As of June 2012, Tierra no longer has access because they left the group.
- EPA has a SharePoint site – CPG has access to their documents, Tierra has access to their documents, each party cannot see the other's documents. EPA may grant access to each other's documents, they have been submitted to EPA.

ISSUE: EPA must decide if this access is going to be granted.

E. Open Discussion

- **CSO/SWO**

- CPG is paying for 49% of this effort, Tierra taking the lead
- Weekly calls – Tierra stated that CPG stopped calling in
- CPG representative – Swiat Kazcimar from O'Brien & Gere, was invited to the field demonstration and did attend. Tierra has not allowed CPG representative to participate in the discussion with Tierra's pesticide method issues
- CSO/SWO AOC signed by Tierra; CPG signed the AOC for sole purpose of allowing Tierra to draw funds from the LPRSA Trust
- CPG amended the trust agreement to allow for the RI/FS trust account to be used as financial assurance for the CSO/SWO work, and so that CSO/SWO invoices could be submitted to the trust account for payment.
- Tierra states it has 100% of liability for completing the CSO Study
- Tierra thinks they have been accommodating to CPG
- CPG believes that the weekly calls that Tierra has agreed to are a waste of time

ISSUES: 1. CPG wants opportunity to give input before documents go to EPA, CPG is not provided with comments or told why their comments were not incorporated at all 2. Tierra does not want CPG to participate in the monthly technical meeting with EPA

- **RM 10.9 Removal Action**

- Tierra is not signatory on the RM 10.9 AOC
- Since EPA ordered them to participate, Tierra would want to be involved because it could impact them
- Once Tierra finds way to participate, does their ability to comment change?
- Tierra's expectation will be to participate on decisions that take place

- **Conclusions**

- Parties should consider level of effort it will take to come to an agreement on cooperating
- Consider what EPA can do to get them there, share/accept comments, EPA will entertain requests from both parties for meeting to discuss comments made on the other party's documents
- Tierra needs to determine if they will rejoin the group, or how they will proceed forward
- EPA's message to Tierra – make a decision on next Trust fund payment (Q1-2013) sooner rather than later, it will make a difference on how the coordination issues are resolved with the CPG
- We need to continue to work on an interim basis, while the two groups decide on how to come to a cooperation agreement. For meetings, attendance will be determined on a case by case basis to decide if parties can participate in EPA-related meetings.
- EPA warned that if Tierra and CPG don't work cooperatively/collaboratively they lose the benefit of scientific interaction
- EPA's oversight costs will increase if EPA is put in the position to incorporate the alternate parties' comments in document reviews and have additional meetings to discuss them
- If Tierra and CPG cannot come to an agreement, at some point EPA may request the data from both RI/FSSs, evaluate it and write the reports

Issues to Carry Forward and/or Resolve by Others

1. EPA wants a list of all documents that will be submitted for NBSA and LPRSA, to have a full accounting of all the work products.
2. Tierra needs to make a decision how to move forward with its future LPRSA RI/FS costs, whether they will continue to pay into the CPG.
3. In general, Tierra requests to observe sample collection in NBSA where the CPG takes the lead and may want to collect split samples.
4. Tierra requests to receive modifications to the SV CWCM plans (QAPPs) and be able to comment on them in advance of submittal to EPA.
5. Tierra wants to review and comment on CPG reports at the same time as CPG members review, and at least 30 days prior to reports being submitted to EPA.
6. Tierra wants to be involved with CPG meetings where decisions are made, especially on the model.
7. Tierra wants updates on the model inputs/output more frequently
8. The CPG believes as primary users of Newark Bay data (i.e., modelers) that they should provide input to QAPP on how and what NBSA data are being collected
9. CPG and Tierra will need to coordinate the NBSA multibeam bathymetry survey; CPG modelers will need to provide input into Tierra's QAPP, want to use similar methods/procedures that were used in LPRSA. EPA has established stringent requirements that CPG conduct its bathymetric surveys subsequent to its 2007 survey using the same contractor, same boats and same equipment for each survey; these same requirements should be required for Tierra's NBSA survey(s) to ensure that the NBSA and LPRSA data sets are comparable.
10. CPG and Tierra want to provide comments on the EPA lead SEDFLUME sampling
11. For Tierra to use the modeling data they will need to run the model (i.e. additional model runs), how will this work going forward, who will do this work?
12. CPG wants opportunity to give input on the CSO/SWO investigation before the documents go to EPA, CPG is not provided with comments or told why their comments were not incorporated at all.
13. EPA willing to share draft documents after submittal with the other party and incorporate their comments. EPA will entertain having meetings to discuss the comments. No guarantee the comments will be passed onto the other party. EPA oversight costs may increase.

Action Items:

1. CPG and Tierra should submit lists of documents that will be generated for NBSA and LPRSA and send to EPA
2. Until an agreement is worked out, EPA will share draft documents with the other party and will decide on whether to incorporate their comments
3. EPA will decide whether to grant access to the EPA SharePoint site to allow both parties to see each other's documents and data
4. Tierra and CPG need to come to an agreement how to proceed forward and meet objectives of the AOCs.